

**Commission on Security & Cooperation in Europe:  
U.S. Helsinki Commission**

**“The Romanian Anti-Corruption Process: Successes and Excesses”**

**Commission Members Present:**

**Senator Roger Wicker (R-MS), Chairman;  
Senator Sheldon Whitehouse (D-RI);  
Representative Robert Aderholt (R-AL);  
Representative Gwen Moore (D-WI)**

**Witnesses:**

**Ambassador Mark Gitenstein, Special Counsel, Mayer Brown;  
Heather Conley, Senior Vice President, Center for Strategic and International  
Studies;  
David Clark, Foreign Policy Commentator and Consultant;  
Philip Stephenson, Chairman, Freedom Capital**

**The Hearing Was Held From 9:32 a.m. To 11:03 a.m. in Room 212-210,  
Senate Visitors Center (SVC), Washington, D.C., Senator Roger Wicker (R-  
MS), Chairman, Commission for Security and Cooperation in Europe,  
presiding**

**Date: Wednesday, June 14, 2017**

WICKER: The hearing will come to order. Good morning to everyone. The Helsinki Commission is mandated to monitor the compliance of participating states with the consensus-based commitments of the Organization for Security and Cooperation in Europe, or OSCE. These include commitments relating to combating corruption and good governance. Today we will focus on the ongoing effort to combat corruption in Romania.

Earlier this year, the Romanian parliament considered passing a bill that would have pardoned many officials who had already been convicted of corruption. This measure sparked mass demonstrations that rolled across Romania – the largest since 1989 – drawing more than half a million people and lasting for more than two weeks. These protests put an international spotlight on how intensely Romanians from all walks of life feel about the corrosive effects of corruption. They reflected the desire of the Romanian people ensure that their country is a transparent democracy based on the rule of law.

Since joining NATO in 2004 and the EU in 2007, Romania's resolve to be a strong and reliable NATO ally and friend to the United States has been truly admirable. Romania has also become a key strategic partner of the United States in an increasingly complex Black Sea region, where eastern members of the Atlantic alliance have been threatened by the aggressive actions of a resurgent Russia on their borders.

The United States attaches great significance to its strong military defense and security cooperation with Romania, which has greatly intensified in recent years. This was demonstrated in the recent meeting between President Trump and President Iohannis, where this strong cooperation was emphasized. Today, U.S. and Romanian soldiers work side by side at NATO's Multinational Division-Southeast Headquarters in Bucharest, and the U.S. Marine Corps play a vital role in NATO's Black Sea Rotational Force. Romania is also playing an integral role in our alliance's ballistic air missile defense and is a strong partner on cyber initiatives and intelligence sharing. It is to be hoped that this partnership will continue.

In order to establish even stronger ties between our two nations, the United States and Romania launched the "Strategic Partnership for the 21<sup>st</sup> Century between Romania and the U.S.," and that is a mouthful. We established this in in 2011. This partnership seeks to expand our partnership beyond shared defense and military cooperation by furthering our mutual prosperity through open markets, encouraging more quality foreign direct investment, and enhancing people-to-people ties between our two countries.

The United States and Romania have been a key-trading partners. In 2016, the United States imported over \$1.9 billion in goods from Romania, up from \$470 million in 2000. U.S. exports to Romania in 2016 were over \$700 million, up from \$230 million in 2000 – in the year 2000. Some of the United States' largest companies invest in Romania, including Citibank, Honeywell Garret, Ford, IBM, and others. It is to be hoped that this trend will continue. In October, the U.S. Department of Commerce will host the largest annual U.S. Government-led trade mission, Trade Winds Southeast Europe, in Bucharest.

This partnership is rooted in a shared commitment to democratic values, respect for human rights, and commitment to good governance and the rule of law. While Romania plays a critical role in the defense of physical security in the West, just as important is the defense of the values of rule of law and the independence of the judiciary. In this regard, however, there is reason for concern. And I will include in the record for today's hearing a letter I received from the National Union of Romanian Judges and Association of Romanian Magistrates. And by unanimous consent I will include it in the record at this point.

This letter asserts that the Romanian Intelligence Service continues to play an aggressive, yet undisclosed, role in criminal investigations and has influence over the judiciary system – even infiltrating and influencing judicial outcomes. This calls into question the continued progress that our two countries have been able to make as outlined earlier in my statement. Romania's anticorruption efforts have garnered international attention and have been held up as an example for other countries, such as Ukraine. We want those efforts to be successful.

In holding this hearing today, we hope to support those working to fight against corruption in a way that is consistent with the rule of law and strengthens the democracy Romanians have worked so hard to build. And in so doing, strengthens our partnership between the United States and Romania. I welcome an excellent panel representing a cross-section of experiences in Romania. These witnesses will assess the anticorruption process – focusing on both the unquestionable progress that's been made to date, but also attempting to address problems that remain in a constructive way.

Leading us off will be Ambassador Marc Gitenstein, currently special counsel at Mayer Brown here in Washington D.C. Ambassador Gitenstein served as U.S. Ambassador to Romania from 2009 through 2012. He was a champion for stronger U.S. relations, as well as an advocate for a fair and transparent business environment for all investors in Romania. He continues to be closely involved with Romania through various board memberships and the activities of his law firm.

Then we will hear from Ms. Heather Conley, senior vice president of the Center for Strategic and International Studies, where she heads the Europe Program. Ms. Conley is a long-time observer of Romania and a highly respected policy analyst of countries in the Black Sea region. From 2001 to 2005, she served as deputy assistant secretary of state in the Bureau for European Affairs with responsibilities for U.S. bilateral relations with the countries of Central Europe.

Next will be Mr. David Clark, who is a former aide to the Right Honorable Robin Cook – the former U.K. foreign minister in Tony Blair's Labor Party Cabinet – and author of a recent Henry Jackson Society report on Romania's fight against corruption and how it has affected the rule of law.

And finally, we will hear from Mr. Phil Stephenson, who will testify about his own experiences as a U.S. investor in Romania, and government actors who may be trying to influence the corruption fight for their own political and economic goals.

So I'm looking forward to this important and fruitful discussion. We will have other members of the Commission in attendance, but because of our schedules they'll be in and out. And so at this point it is – it is my pleasure to recognize Ambassador Gitenstein and ask him to make his opening statement. Sir, you are recognized.

GITENSTEIN: Yeah. Oh, there you go.

Well, thank you, Mr. Chairman, and members of the Commission for setting up the hearing. And I'm honored that you invited me to appear. I would like to introduce Corina Rebegea, who's sitting behind me, a political analyst at the Center for European Policy Analysis, or CEPA, here in Washington. She helped me prepare my testimony today and I want to thank her publicly.

I will focus on the areas where I have expertise from my time in Romania as ambassador, and since I left there as a board member of Fondul Proprietatea, the largest equity in Romania, which has invested entirely in Romanian state-owned enterprises, or SOEs, as we call them. In that capacity, I have returned to Romania approximately two dozen times since 2012, and concentrated on the issues of transparency, accountability, and prevention of corruption in these critical SOEs. The fight against corruption is going remarkably well. It is apolitical, competent, independent and aggressive.

It enjoys broad-based support from the Romanian people, as evidenced by 500,000 Romanians who went into the street earlier this year to protest changes in the criminal code, some of which would have undermined DNA's work in the fight against corruption. DNA, by the way, is the anticorruption prosecutor for Romania. So, in that respect, Romania is a model for the region. I totally agree with President Trump in his recent letter to Romania's president, Klaus Iohannis, a sentiment which he reiterated in his press conference last Friday, applauding Romania's fight against corruption.

Romania was admitted to the EU in 2007, along with Bulgaria, subject to a unique monitoring program known as the Cooperation and Verification Mechanism, or CVM. Experts at the European Commission have established very specific benchmarks for the court system and the prosecutorial offices in Romania. And every six months since then have released reports analyzing progress against those benchmarks. The success of the Romanian anticorruption program is attributable largely to the CVM, its support from Western embassies including the U.S., but most importantly the courage and professionalism of Romanian prosecutors and judges, and the stalwart support of the people of Romania.

I know there is concern about whether the DNA has a political agenda or is a tool of the intelligence agencies. In fact, there is an entire mythology or conspiracy theory build about it, often advocated by those who are under investigation by the DNA. I recall that when I was ambassador one corrupt politician saying, quote, "The SRI," that's the Romanian FBI, "is the locomotive and the DNA is the caboose. We need to disable the locomotive," unquote. The targets of corruption have been trying to do just that ever since.

I've read all the CVM reports, talked to their authors, to my law enforcement staff when I was ambassador, other professionals at the embassy, other ambassadors and NGOs, as well as independent media in Romania. None have provided significant evidence for the allegations that the anticorruption regime is a tool of the intelligence services or any political party. If there are significant weaknesses, it is the system for granting legislative immunity. Second, that there is not a sufficiently robust program for corruption prevention in Romania. And finally, that many political elites do not sufficiently support the program. I go into this in much more detail in my written statement and would be happy to answer questions about that.

I am optimistic about Romania, largely because of the half-million young Romanians who were in the streets a few months ago in defense of anticorruption. They know that the primary way to end the legacy of communism and authoritarianism is to end corruption and adopt a true system, as our framers would say, of a nation of laws not men. The closer we reach the ideal, the sooner we will raise the standard of living in those countries, strengthen them against populist, nationalistic, even racist anti-democratic or illiberal trends in the region. It is the perfect vaccine against these dangerous movements.

Corina and I stand ready to help the Commission in any way we can, and I'm happy to answer any of your questions. I ask the Commission to include my full statement and attachments in the record. Thank you very much, Mr. Chairman.

WICKER: Without objection, it will be included.

Ms. Conley, you are recognized.

CONLEY: Mr. Chairman, Senator Whitehouse, thank you for this opportunity to speak to you on a matter of national security: the battle of Western democracies to defeat corruption. For far too long, tackling corruption went unaddressed in our foreign policy discussions. But we have now come to understand that corruption is a systemic weakness from within a country that can be exploited and influenced by adversaries, both domestic and foreign, and from which no country is immune.

Today's discussion appropriately focuses on a very important NATO ally to the United States, which is why it is essential that we have a robust, transparent and public discussion about Romania's persistent corruption and the limits of their anticorruption efforts thus far. I strongly encourage the Commission to continue this examination anticorruption efforts of America's NATO allies, both in Central and in Western Europe.

I will focus my comments today on Romania's evolution in fighting corruption from when the country was first inspired to join NATO to the present day. This is a subject that is very personal to me, as I served as deputy secretary of state during Romania's NATO accession process. And I was responsible for U.S.-Romanian bilateral relations during that timeframe. And at the time, our conclusion – that of the U.S. interagency process – was that Romania's greatest national security vulnerability was corruption, identified in the judiciary, the executive function, and in public procurement.

At the time, Prime Minister Nastase himself called it a “threat to democracy” and vowed to make the fight against corruption his number-one priority. Our ambassador to Romania at the time, Mark’s predecessor Michael Guest, repeatedly warned it was the top obstacle to the country’s NATO accession and to its stability. And this is why the U.S. government spent an enormous amount of time and effort analyzing Romania’s anticorruption legislation and, most importantly, the implementation of this legislation and the prosecution of corruption cases. We spoke directly to the prime minister, the foreign minister, the defense minister, senior parliamentarians repeatedly about the need to meaningfully tackle corruption.

Candidly, I felt sometimes that U.S. officials felt more deeply about this issue than senior Romanian officials. Romania was clearly vulnerable to the debilitating combination of deep-seated corruption and weak institutions, which caused them to be unable to effectively implement a viable anticorruption legal framework. The Romanian government gave the impression that it was taking serious action at the time by passing legislation, but these laws were not fully implemented and certainly not at the highest levels.

Looking back, I believe U.S. policymakers – and I include myself – made a terrible assumption. We believed that Romania’s membership into NATO in 2004 and the EU in 2007 was the policy finish line. In fact, it was just the starting line, without the leverage. After 2004, when the U.S. Senate ratified the amended Washington Treaty, the U.S. focused on Romania’s geostrategic location and its security contributions to the U.S. and to NATO. And we dramatically reduced our foreign assistance presence and engagement in Romania at the exact moment when we should have increased U.S. assistance to protect hard-fought gains, and insisted on progress in anticorruption efforts in lieu of security assistance requests.

We needed to also strengthen institutions and our engagement with Romanian civil society. Just to give you a very brief figure, in 2002, the United States provided \$163 million in aid to Romania which was a significant focus on government and civil society. By 2014, that dropped below \$10 million. Quite simply, this is what leaving the policy playing field looks like. And we’ve paid a high price for our departure. Corruption has increased, institutions are under threat, and political figures are using corruption as a political weapon to denigrate one another. What they are doing is eroding democracy itself.

Transparency is bipartisan. And corruption is a form cancer that destroys democracies from within by weakening or destroying institutions, eroding public confidence in democratic leaders and societies. We have observed how countries such as Russia have certainly exploited this weakness to great effect.

I just want to conclude by stating a few I think simple but underappreciated facts. Democratic institutions defend citizens and their rights. Because corruption so severely damages institutions, it is a threat to the safety, security and liberty of Romanian citizens. Corruption is an affront to liberal democracies and to the liberty and the dignity of the individual. It was this affront to human dignity that spontaneously drove 500,000 Romanians out into the streets in the middle of a freezing night to say no to the government’s attempt to force an emergency decree to weaken Romania’s anticorruption laws. It is an affront to the dignity of Russian citizens, which

is what we saw earlier this week when thousands of young Russians protested their government's corrupt regime.

America must return to the playing field in Romania, with the understanding that anticorruption efforts are a vital element of national security, because the strength of institutions represent the ultimate form of protection of our citizens. Fighting corruption is a constant battle that requires constant policy vigilance. And to win the battle, Romanians must both recognize the extent of the threat, stabilize and strengthen their institutions, such as the DNA, and mobilize the population through civil society to prevent democratic backsliding. Now, this is simple in theory, but quite difficult in practice. Thank you.

WICKER: Thank you.

Mr. Clark.

CLARK: Thank you very much, Mr. Chairman.

Democracy in Europe is facing its greatest challenge since the fall of the Berlin Wall. Romania, in this respect, should be regarded as a country of concern due to longstanding and unresolved problems with corruption and the rule of law. The mass protests that forced the Romanian government to abandon efforts to limit the scope of anticorruption investigations in January showed that there is overwhelming support for firm action in this area.

Yet the strength of public feeling sometimes means that anticorruption work is subject to inadequate scrutiny. In addition to dealing with many genuine acts of criminality, there are grounds for concluding that Romania's anticorruption campaign has also provided convenient cover for acts of political score-settling and serious human rights violations that show troubling disregard for the rule of law. Indeed, the methods used often show a considerable degree of continuity with the practices and attitudes of the communist era.

The conduct of Romania's anticorruption campaign gives rise to five areas of specific concern. Number one, the politicization of justice. The claim that Romania's National Anticorruption Directorate, the DNA, and Directorate of Investigation of Organized Crime and Terrorism, DIICOT, act as impartial prosecutors is difficult to reconcile with the facts. There has often been a strong correlation between those targeted for prosecution and the interests of whoever happens to be in power at the time. Cases have sometimes been accompanied by campaigns of public vilification designed to maximize their political impact.

Two, collusion between prosecutors and the executive. The rule of law requires a separation of powers in which prosecutors act independently of the executive. In Romania, it is apparent that politicians have at times exerted considerable operational influence over the DNA using their control of key appointments. There is evidence in several cases to indicate improper contact between the DNA and the government, and suggest that investigations have been politically directed.

Three, the covert role of the intelligence services. The Romanian Intelligence Service, SRI, successor to the communist-era Securitate, plays a significant and largely undisclosed role in directing anticorruption prosecutions. It carries out 20,000 telephone intercepts on behalf of the DNA every year, initiates DNA investigations and, in its own words, regards the judicial system as, quote, a “tactical field” of operations. These activities have not been adequately scrutinized and the government has refused to respond to calls from organizations representing Romanian judges to investigate suspicions that the SRI has infiltrated the judiciary and the prosecution services.

Four, lack of respect for judicial independence. Both the SRI and the DNA have been criticized for undermining judicial independence, another core principle of liberal justice. Judges who fail to do the DNA’s bidding and rule in its favor have themselves become targets of investigation, while those deemed friendly to its interests have seen their loyalty repaid. A pliant judiciary willing to bend the rules helps the DNA to maintain extraordinary conviction rates of 92 percent. One senior judge on the Constitutional Court has also accused the SRI of unlawfully attempting to intimidate him and his colleagues.

Five, abuses of process by anticorruption prosecutors. Methods routinely employed by the DNA are incompatible with standards that apply in most democratic countries. These include parading those arrested in handcuffs for the benefit of the media, threatening the relatives of suspects with indictment as a form of leverage, offering suspects immunity in exchange for implicating someone more senior and newsworthy, and systematically leaking evidence to the media to preclude a fair hearing in court. Important principles of justice, including the right to a fair trial and the presumption of innocence, are being routinely violated as part of Romania’s anticorruption campaign.

When challenged on these points, the DNA is quick to resort to intimidatory tactics. I experienced this personally after a report I had written detailing many of these concerns was published in January of this year. I have provided a copy of the report to the Commission. Following widespread media coverage of the report, the DNA initiated an official inquiry by the Superior Council of Magistracy, which ruled against me on 9<sup>th</sup> May. In a bizarre example of Soviet-era doublethink, my work in exposing violations of judicial independence in Romania was itself deemed to be an assault on judicial independence. This process was intended to be intimidatory, revealing the DNA to be an organization that operates without respect for democratic principles, including freedom of speech and the independence of civil society.

The infringements of human rights taking place under the banner of anticorruption ought to be a matter of serious concern to Romania’s international partners. The rule of law is a vital pillar of democratic governance and its weakness in Romania constitutes a major systemic risk in a strategically important region of Europe. The problem, as we saw with the protests earlier this year, is that Romanian politicians are not trusted to supervise the work of anticorruption prosecutors. The DNA, DIICOT and the SRI exploit that fact to operate beyond the boundaries of legitimate scrutiny, in effect operating a state within a state.

The U.S. has an important role to play as a senior member of NATO and Romania’s most important ally. The State Department human rights reporting should reflect increased concern



about the consequences of Romania's approach to fighting corruption. Particular attention should be given to the question of whether Romania's domestic intelligence service operates under effective civilian control, as required under the terms of NATO membership. Additional tools should also be used to deal with the politicization of justice. In at least one high profile case, there are strong grounds for triggering the provisions of the Global Magnitsky Human Rights Accountability Act against individual human rights abusers in positions of authority.

Thank you.

WICKER: Thank you very much.

Mr. Stephenson, you're recognized.

STEPHENSON: Thank you Mr. Chairman and members of the committee for this opportunity to testify. My name is Phil Stephenson, I'm an American citizen living in Northern Virginia, where my company is active in buying, refurbishing, and renting apartment properties. I graduated both Harvard College and Harvard Law School, and have served as a top secret-cleared official in the U.S. Treasury Department, appointed there by the first President George Bush. And, in a truly bizarre turn of events, I am personally being investigated by Romanian prosecutors today, whose stated goal is to put me in jail in Romania and confiscate my property.

Before going into my personal story, let me say I fully agree with both Ambassador Gitenstein and Ms. Conley, and I think Mr. Clark, about the need for Romanians to continue to fight corruption. But I also agree with the details provided by Mr. Clark, that there is small part of the fight against corruption that has itself been corrupted, where government officials have influenced prosecutors and judges to pursue criminal cases that serve their own narrow political and even economic interests. My story is therefore not one of policy, but one of life experience. And it should give pause to any foreign business that has invested, or is thinking of investing, in Romania.

So here is my story. Twenty years ago I was living in D.C. and managing one of the first private equity funds for emerging markets. We raised a \$20 million fund specifically for Romania. Our lead investors were the World Bank Group and the German government, who did extensive due diligence on us and our partners. On a visit to Bucharest, I had the pleasure to meet their president, the governor of the central bank, and local business leaders, one of whom became my partner. We decided to accept their invitation to invest in ongoing privatizations in '97.

At that time, Romania was in economic free fall. Its GDP in '72 fell 6.5 percent and inflation rate was 150 percent. They were desperate for investment. Factories were being closed and workers laid off. Few credible buyers showed up with money. So from 1997 to 2001, our fund bought stakes in three companies. By far, the most successful was in a company, Rompetrol. Now, the details of Rompetrol's growth are detailed in my written testimony, but what's key is that our business strategy was to be a transparent well-managed company that gained the respect and confidence of international banks and, therefore, got the capital we needed to restructure operations and make acquisitions.

It took us, my team, five years of around the clock work, but we revamped our refineries technology, including with U.S. assistance, franchised a network of gas stations, and even made acquisitions as far away as France and Spain. Eventually we grew to 6,000 employees, 2 billion (dollars) in revenues. We represented 3 percent of Romania's GDP and 7 percent of its tax base. But with all that success came problems. Our remarkable growth made us a target of an alliance of Romanian politicians, oil barons, and intelligence agencies that had heretofore controlled the Romanian oil industry for their own benefit. Since our business transparency gave us access to almost a billion dollars of bank capital from international banks, our success threatened to change the oil business works in Romania.

In 2003, three of these oil barons visited our Bucharest office and proposed a 50/50 merger with no payment, threatening that there will be consequences if we did not accept. This was extortion, pure and simple. We refused the offer we couldn't refuse, and we braced for the consequences. Several months later, General Ion Talpes, then the national security advisor to the president but formerly a top official in Ceausescu's brutal Securitate, released a report on live television labeling me and other executives of our firm to be part of an organized criminal gang. He called for an investigation and suggested that our main asset, the Petromedia refinery, should be returned to the state.

Now, at this point it's important to clarify that he called for the PNA, the DNA's predecessor, to investigate us. The DNA declined to do, so the case went to DIICOT, the Department for the Investigation of Organized Crime and Terrorism. I think there's a significant difference in the quality and respect of the DNA, as pointed out by Ambassador Gitenstein, and the people who are now investigating me for events that are almost 20 years old. Despite our doubts, we defended ourselves in local courts, who have a 92 percent conviction rate in corruption cases, and we also met with officials in D.C. and Brussels who were concerned about justice there. The U.S. House of Representatives passed a resolution condemning this investigation as symptomatic of, quote, "Romania's lack of a truly independent, professional, and non-political justice system."

WICKER: When was that passed?

STEPHENSON: I think it was 2005 or 2006, sir. And I will include it in my testimony that I submit. I just don't remember the date - '(0)5 or '(0)6. The U.S. State Department took the unusual step of publicly warning Romania about these investigations. And that will also be part of my written record submissions.

This international pressure succeeded in 2006 in having these charges set aside against the two Americans that were involved, including me, but it didn't help the 10 Romanians that were still under investigation. After a long trial, all 10 Romanians were found not guilty, but there is no double jeopardy in Romania. So the prosecutors appealed. And on appeal, all of the acquittals were reversed, and most of these people spent time in jail.

By 2007, 10 years into this process, my business partner and I were exhausted. And we decided to sell Rompetrol. We hired Morgan Stanley to hold an auction, we got four bidders,

and we accepted the largest bid, which was from the government of Kazakhstan's oil company. I took my share of those sale proceeds and returned to Virginia to start a family. Today my son is six years old. All of this was a distant memory for me until May of last year, when Romanian prosecutors suddenly announced – and this is DIICOT, not DNA – suddenly announced that they were reopening an investigation into these events that occurred almost 15 years ago.

I believe the reopening of the investigation was the result of a new dispute between the Romanian government and the Kazakh owners of Rompetrol, the ones who bought from us. Just before my case was reopened, the Kazakhs engaged in a bitter spat with their Romanian hosts over money and tax bills, and the Kazakhs tried to sell their company to a foreign buyer and exit the country. Old allegations of impropriety in my file were used as the pretext for the Romanians to seize the shares in that refinery, prevent the sale by the Kazakhs, and be a first step towards economic nationalization. Unfortunately, me and the 11 other people – including three Americans total – are caught in the crossfire between the Romanians and the Kazakhs. Given the things I've heard about Romania's secret service influence over the judiciary, I doubt that a fair trial is possible.

In conclusion, I have great respect for the Romanian allies and their accomplishments, and wish them well. But thank you for this opportunity to testify and please include my testimony in the record – and documents in the record, sir.

WICKER: OK, without objection we'll include all of the testimony – written testimonies in the record at this point.

Mr. Stephenson, this is certainly a graphic testimony. What would you suggest the Helsinki Commission do in this regard?

STEPHENSON: I think, on behalf of the three Americans and nine Romanians who are being targeted by DIICOT, if this committee could turn a bright spotlight on this situation. I think that was successful back in 2006, because these actions cannot withstand the scrutiny of people like this Commission, in particular.

Secondly, as part of my written testimony I have submitted a scholarly journal article by three political scientists, independent of Romania, who suggest 13 specific recommendations that could be pursued to make the judiciary more effective. And I think most of this committee would support all 13. I particularly highlight the one that says that the intelligence service, the SRI, must declare its officers in the prosecution and courts offices, and have those officers resign. I think that would make a difference.

And then third, to the extent that the members of this committee could speak to Romanian officials who might be concerned about this, or even American executive branch officials, that would be greatly appreciated. Thank you.

WICKER: OK. Just to make sure that we get this, let's include those three attached papers with your testimony in the record at this particular point. OK. Ambassador Gitenstein, is this a conspiracy theory and mythology or is Mr. Stephenson's testimony quite another matter?

GITENSTEIN: I was referring to the DNA investigations. He's referring to a DIICOT investigation, which is two different things. Let me just respond to some of the other – Mr. Clark's testimony, which goes to this very issue, OK? The first allegation was that there's targeting – political targeting of particular individuals through the DNA. And this is orchestrated by people in power, by the prime minister. I know if two cases, one in which the DNA prosecuted the sitting prime minister of Romania just in the last few years, who was the government, and also the brother of the president of Romania. So, you know, my experience when I was ambassador was this was not the case. And even since I was ambassador, you have that example.

Secondly, on the question of the SRI and the wiretaps being used by DNA – 20,000 wiretaps, it was the Romanian court system that stopped that. They stopped it about two years ago – or a year or so ago. And they stopped the SRI from using its wiretaps in corruption cases. So there you have the Romanian court system itself holding the SRI accountable, which well it should have. And third, Senator Whitehouse, I believe, was a prosecutor and probably knows this as well as anybody, a good prosecutor has a responsibility, I agree, to screen cases, and certainly screen out cases that are politically motivated.

Now, one piece of evidence that Mr. Clark uses is that the conviction rate is 92 percent. The conviction rate in the premier U.S. prosecutor's office, Southern District of New York, is well-above 92 percent. Indeed, the overall conviction rate in the federal prosecutorial system is in the range of 99 percent. And the reason for that is because good prosecutors screen out bad cases and they get guilty pleas and go to trial only on cases where they're pretty sure they can win. And that's why the conviction rate is so high. So that's – those are three points I would make in response to the points that Mr. Clark makes.

And as to Mr. Stephenson's case, I'm really not familiar with the details of that case and, as I say, it was not a DNA case. It was a DIICOT case.

WICKER: OK. Well, there is this unique monitoring program.

GITENSTEIN: There is, yeah.

WICKER: By which Romania was allowed to sort of join the community of nations. Would you say there has been progress or there's been regression in recent years?

GITENSTEIN: I think the CVM – by the way, one recommendation I would have for you in response to Mr. Stephenson's case, and Mr. Clark's recommendations, is that you meet with the people that do the CVM. I know nobody who knows more about what's going on in the Romanian justice system from outside of Romania than the CVM. There are very thorough reports. They're very well-done. For a long – while I was ambassador, it was done by a Brit. I can't remember his name. I was very impressed with him.

They are very thorough reports. I suggest that they be added to the record. It's a very good system for analyzing a justice system. And by the way, it's a good model for how you

reform anticorruption. I've read all of those reports. I've talked to the people that wrote the reports. I've asked them about these allegations, when I was ambassador. Now, in fairness, I have not talked to them since I was ambassador. But in reading reports, they show a general trendline in the right direction. And indeed, it may result in the EU lifting the CVM for Romania, if not for Bulgaria, which would be a good thing, I think.

WICKER: So the bottom line answer to my question is that you think things are getting better in Romania in this regard.

GITENSTEIN: Yes. And that's why 500,000 people were on the street when there was an effort to reverse that. And this was not orchestrated by anybody. This was just ordinary Romanians like us.

WICKER: And the CVM stands for –

GITENSTEIN: Cooperation –

WICKER: Cooperation and Verification –

GITENSTEIN: Mechanism.

WICKER: Mechanism.

GITENSTEIN: Yeah.

WICKER: Is it – it's fair to say though, isn't it, that Romania would not have been admitted given their history without agreeing to this special monitoring mechanism.

GITENSTEIN: That's absolutely right. And it's critical to the success of this program. It's critical to the preservation of democracy and rule of law in Romania. And if you believe that there have been abuses I think you should address that. Now, one of the benchmarks they use is the fairness and the application of the rule of law to the corruption system. So they look at this question. And I think it's legitimate for you, through the State Department or directly, to ask them about it.

WICKER: Well, let me just – we've got all this investment now. Trade is increasing. Exports are increasing. Imports are increasing. Citibank, Honeywell Garrett, Ford, IBM. Stories like Mr. Stephenson's call into question whether this trend can continue. I've way exceeded my time, but I think we'll let Ms. Conley and Mr. Clark respond to what's been said so far, if you'd like to clarify or take issue.

CONLEY: Well, just a very brief comment, and then turn to Mr. Clark. It was an extraordinary instrument the European Union imposed on both Romania and Bulgaria for this monitoring. It has been in place for a decade and continues to be needed, in my view.

WICKER: It was appropriate.

CONLEY: It was absolutely appropriate. This was the identified weakness for both the European Union and NATO about Romania's joining both institutions. And the EU has maintained this monitoring mechanism and I think should continue. I think you have to look at these efforts as a – as I said, this is a constant battle. And I put this in more military terms, because in some ways it is a battle for the health of institutions and for their independence. Progress is being seen in Romania. Two steps forward, and then we'll take a step and a half back, and you continue on. As I said, our error is we assumed that they've got this. They can do this. And the challenge is we're all a work in progress and the weak institutions and these networks are constantly challenging Romanian institutions, even 10 years after its membership in the European Union.

We just can't let us. And the spotlight and the transparency and the focus, giving the Romanian government a pat on the back when they take difficult steps, but also not giving up when they take steps backward. I think that's the policy prescription. The role of the of the Helsinki Commission is to continue to understand that in the human dimension, in the third basket, this is now a core pillar. And it's not just happening in countries in the post-Soviet space or even in the western Balkans. This is the – this battle is going on in every OSCE country, including in Western and Central Europe. That to me is a strong message this is something we're all dealing with.

And I'll turn to Mr. Clark.

WICKER: Mr. Clark.

CLARK: Thank you very much. On the question of CVM reports, yes, the CVM mechanism is a necessary one. It was necessary at the time when Romania joined. It continues to be necessary, in my opinion. But you have to understand how the European Commission, who authored these reports, works. There is, I'm afraid, within the European Union, an enormous capacity for wishful thinking, not least with regard to the governance standards of its own members. Just look at how slow the EU has been to respond to the serious deterioration of democratic standards in Hungary, for example, and also more recently in Poland. It's been extremely slow to do so.

Bear also in mind that the European Commission is the same organization that verified Greece's national accounts more than a decade ago and allowed it to join the eurozone when it was quite obvious that Greece's national accounts – and was said so at the time by many people – were not in any fit state to meet the convergence criteria for monetary union, another example of epic wishful thinking by the European Union. I see the CVM reports that have been referred to in the same light, I'm afraid. I think they are an example of the EU turning its face away from a very difficult and growing problem right in front of its eyes, because it's distracted with too many other things. It wants to believe that there is at least one part of this equation that is going right.

And I would ask you, by all means, consider the CVM report, but also set them side by side with the testimony that's been given by the two associations of Romanian judges, who point

to very, very serious concerns about standards of justice in Romania, about their own independence, how it is threatened by the domestic intelligence agency, and ask yourselves who is more likely to have a better grasp of the health of justice in Romania, the judges who are administering it or some officials sitting in Brussels. I would say you should give more weight to the opinions of the judges.

On very specific questions that Ambassador Gitenstein has raised – on the question of wiretaps, yes, the court struck down the wiretapping on anticorruption cases. The government immediately, of course, relegalized them through executive decree. So they're still going on. They haven't been stopped. The court decision counted for nothing, as it happens. On questions of political justice, I think my memorandum – I won't go into it in length now – but my memorandum establishes very clearly a strong pattern of politicized justice in Romania. And on the question of conviction rates – the 92 percent conviction rate, yes, of course, that in itself isn't necessarily proof that the system is wrong. There are some systems which produce very high conviction rates for precisely the reason that Ambassador Gitenstein says. They filter out all cases that might be lost. Japan is another country that has very high conviction rates for that same reason.

But the other sort of country, the other situation in which countries manage to secure very high conviction rates are authoritarian countries, or formerly authoritarian countries, in which there is not a proper separation of powers, and in which the court system operates as an arm of the state, not as a neutral arbiter between citizenry and state, and in which the judiciary is under pressure to do the bidding of powerful forces around it, rather than come to independent judgements. I think everything that I know about Romania puts them in the second category of states that have deficient justice systems and not in the first category of justice systems that work to a high level of efficiency.

WICKER: Senator Whitehouse.

WHITEHOUSE: Thank you, Chairman.

Thank you all for being here. I'd like to ask a question of our three policy witnesses who are here.

Your testimony seems to point to a conclusion that corruption is now systemic, pervasive, often an avenue of Russian influence, and has risen to a national security level for our country in its relations with the countries, including Romania but others, in which corruption is a problem. Is that a fair conclusion?

CONLEY: Certain, sir, for my testimony, yes.

GITENSTEIN: Absolutely. That's why it was my highest priority.

WHITEHOUSE: Yeah. Mr. Clark, you agree?

CLARK: Yes, absolutely.

WHITEHOUSE: OK. So given the importance of this issue, I'm struck by this observation and would like you to comment on it: Those who are corrupt and who are robbing or receiving bribes or otherwise engaged in corrupt activities within corrupt countries, then take their ill-gotten gains, and move them over into rule of law countries, because in corrupt countries their gains are less amenable to being raided by other more powerful corrupt institutions or individuals.

And it strikes me that we – there's obviously no pure exact black and white distinction, but if you could hypothesize a world in which there was a corruption world and a rule of law world, we in rule of law world are actually enabling and supporting the winners in corruption world by allowing them to find sanctuary for their proceeds in our rule of law world. And it strikes me that we could do a much better job in our rule of law world of policing that boundary so that we are not in fact subsidizing, supporting, enabling, whatever words you want to use the very corruption that we claim to now see as a national security threat. Do you think that's an accurate observation? And what would you recommend we consider doing about that?

GITENSTEIN: Well, I think it's a very important observation. And it's true – it's absolutely true. When I was ambassador, fortunately I think the month before I became ambassador we concluded an extradition treaty with Romania. And I spent a lot of my time as ambassador trying to be sure that that extradition treaty worked, so that we could work between the two countries to track down fugitives, but also money. I think if there's a big weakness in the Romanian system it's that it's very – even with the DNA, they do not –

WHITEHOUSE: I'm less interested in it from the Romanian point of view, than I am from the more global point of view.

GITENSTEIN: Well, let me finish the thought, which is that the Romanians are very poor at tracking down money. And a lot of that money ends up in the United States or in Switzerland or in Bahamian bank accounts. And they are not very good at it. And we need to train them to do that. And we, in the U.S. government and the Justice Department, need to be more supportive of the Romanians, both in training and in law enforcement, in tracking down these resources. Much of it ends up in this country. You're absolutely right.

WHITEHOUSE: Ms. Conley.

CONLEY: Senator, absolutely. There is – it is absolutely ironic, where you have corrupt regimes, such as Russia, a lot of their funding circulates through European Union banks – Cyprus, Latvia, are two examples – where capital flight is going into rule of law countries so that they can be protected from their own regime.

WHITEHOUSE: Including America.

CONLEY: So it is absolutely an issue. And what you're – what you're suggesting is, and this is where I think we do have to be very clear on our terms, this is in some ways an ideological struggle between liberalism and illiberalism. And what we need to have is a full-



throttled defense of liberalism as we are combatting the efforts of illiberalism, of which oligarchs, corruption is in itself the heart of illiberalism.

WHITEHOUSE: Sometimes those words have a slightly different meaning on the other side of the dais here. So could we call that transparency and corruption and would it have essentially the same meaning?

CONLEY: It would have the exact same meaning. Yes, sir. Thank you. (Laughter.)

WHITEHOUSE: OK, good. I don't want to make Roger too nervous.

CONLEY: No, no. (Laughter.)

WHITEHOUSE: With these paeans to liberalism.

CONLEY: But I want to just comment on Mr. Stephenson's testimony, Ambassador Gitenstein's. Both of their private sector work now is to drive transparency into Romanian through their business practices. This is the contagion. We take our Western practices and we force them to adopt our system. And when they encounter those struggles, we know we have – in fact, this is where transparency or that liberalism fights the nature of illiberalism.

I just want to – one note, because I don't want there to be any confusion. I do not observe as an analyst an amount of Russian influence into this equation. What we are really talking about is Romanian meeting its own devils and its own ghosts of its corruption. But what I would like to highlight is that what we know from Russian doctrine, they exploit the weaknesses that are on offer. This is a clear weakness. And what concerns me about this weakness is that because Romania is hosting a very important site for our missile defense system, is under pressure from the Kremlin to not host that site and has received threats, could this weakness be exploited? I have not seen that thus far, but I want to put this on the table as this is something that could be exploited by adversaries. It's certainly being exploited in some ways for domestic reasons. So I just wanted to be –

WHITEHOUSE: And it is Russian policy to exploit those vectors.

CONLEY: It is exactly doctrine. And as we know so well –

WHITEHOUSE: As well documented in your terrific Kremlin handbook report. So thank you again for that.

CONLEY: Thank you, Senator.

WHITEHOUSE: Thank you very much.

CLARK: Can I just make – in response to that?

WHITEHOUSE: Yes, I'm sorry.

CLARK: Yes, you're right. I mean, in the – in the world in which transparency and legality are functional there is often too much of a willingness to accept capital flows and investments and the import of property from countries where there is widespread corruption. And there aren't sufficient checks often on the legality of those revenue flows. I think the U.K. is one country that is open to serious criticism actually on that front, particularly as it relates to property and money that is being transferred from the former Soviet countries.

The second point I would make is that it's often very difficult though to distinguish between what is corrupt money and what isn't. Often very legitimate business people will try to transfer their capital out of these jurisdictions precisely because they fear becoming victims of corruption. You need to distinguish between the legitimate businesses that are trying to survive and protect their property, and those that are trying to launder illegal property.

The final thing I would say is that be careful of this extradition issue. Quite often corrupt authoritarian regimes will see the extradition of political opponents on grounds of corruption because they know that it's the easiest way to get Western governments to look the other way. It's the easiest way to put a stigma on the reputation of person that they want to get back to their own country, not because they've done anything illegal but because they are a political opponent and they want them to be shut up.

So be very, very careful of the extradition process, because there is one case in the U.K. at the moment where the Romanian government is seeking the extradition of one German citizen on transparently political grounds. There has been an international arbitration tribunal ruling against the application for extradition under the European Arrest Warrant system. The Romanians have defied their legal obligations in refusing to withdraw that European Arrest Warrant application, and a British court is about to hear that case next month.

I would urge this Commission to pay very close attention to that hearing and the evidence that will emerge in it because it will substantiate very clearly the existence of politicized justice, of collusion between the executive and the prosecutors, and the role of the SRI in driving a lot of that process. A very interesting case. And the documentation that emerges from that is something that the Commission should take into own record, I feel. Thank you.

WICKER: I think Mr. Stephenson wants to respond also.

STEPHENSON: Thank you, Mr. Chairman. Just very briefly, I want to note that in the charges that are being investigated against me there is no allegation – and there certainly never could be any proof – that a bribe was given or accepted. That's not part of what's going on. These are essentially old tax disputes going back 15 years. And they've taken matters that I think would be civil in this country and they've criminalized them as a way to threaten these 12 people with jail and to give up what they have. It's not dissimilar to what happened in the Yukos case. And it's in the same industry. Thank you.

WICKER: It does sound fairly similar. Before I recognize Ms. Moore, Mr. Clark and Mr. Stephenson, in this case a red notice is placed on travel for these individuals.

CLARK: In the case of the U.K. it's different because superseding other extradition regimes, the European arrest warrant exists between members of the European Union. Whether that will continue to be the case as the U.K. withdraws from the EU remains to be seen. But at the moment, there's a fast-track to extradition procedure, which works on the basis of mutual recognition, which means that the U.K. authorities are obliged to treat the decisions of the Romanian courts as though they were their own decisions. For me, that's a very serious flaw if you have that level of sovereignty sharing with a country that has a judicial system as flawed as Romania's, and is one of my big criticism of the EAW system as it currently stands.

WICKER: Yes. Mr. Stephenson, can you travel freely in other EU countries?

STEPHENSON: On the advice of my counsel I've restricted that travel until that issue is clarified. It appears that I will be able to soon, because I have participated in the investigation through local counsel. My counsel here in Washington, Kirkland and Ellis, has said: Don't go to Romania because you may not be able to leave. And be careful about traveling in Europe.

WICKER: You know, I haven't been a lawyer in a long time, but I'd say that's probably good advice. I'd stay out of Romania. (Laughter.)

Ms. Moore.

MOORE: Thank you so much, Mr. Chairman. And I do believe I'm the newest Helsinki Commissioner, although I've traveled with the Helsinki Commission for the past decade. I really do appreciate the work of the OSCE.

WICKER: You bring a lot of experience to the table as a new member.

MOORE: I also am a member of the Financial Services Committee. I'm the ranking member on Monetary Policy and Trade Subcommittee. And as such, we do have jurisdiction over the World Bank, the IMF, the multilateral banks. And we are very, very much engaged with provisions that seek to prevent corrupt transactions and engagements.

And you know, the Foreign Corrupt Practices Act of 1977 – and I am going somewhere with this – put that in place. And of course, our companies screamed and carried on about the expense that that would cause, and how uncompetitive that would make some of our companies. But what they found is that it really protected them from corruption: the Financial Accounting Standard 19 that the SEC put in place; Sarbanes-Oxley – we still hear people moaning about that – after the meltdown of Enron; and just recently Dodd-Frank. We've moved that through – sort of a repeal of Dodd-Frank. But even before that, Section 1504 of Dodd-Frank was struck down by now-President Trump, which required disclosures of oil extractions to protect our American companies.

And so I'm wondering, Mr. Stephenson, if you are protected by any of these laws, what – to what extent is American jurisprudence being accessed to protect your rights – I mean, assuming that you followed all of these provisions under American law?

STEPHENSON: Thank you, ma'am. I was involved in this business between 1997 and 2007, and so the law that would apply would be the Foreign Corrupt Practices Act, I believe. We were a private company. I was a minority shareholder in it. But I can tell you that I've done business for 20 years in emerging markets, like India and Moldova. And I thank God for Foreign Corrupt Practices Act because two things happen: Number one, if you're ever asked for a bribe – and I was several times – I say, love to help you, but I'd go to jail – but I'd go to jail if I did.

MOORE: Exactly. Exactly.

STEPHENSON: And so that is why I only got asked a couple – and the only reason we – the only – I got asked a couple times is foreign government officials have learned about it and that that's going to be the reaction of an American executive because we're just not going to take the risk of going to jail. And so I support that –

MOORE: It protects you.

STEPHENSON: It protects us.

MOORE: And Ms. Conley, I'd think that you probably have a comment on that.

CONLEY: I do absolutely. And it goes to the –

MOORE: And please talk about Dodd-Frank too.

CONLEY: What is so important – and this in some ways is the phenomena of globalization – we have greater transparency. And this is where democracies can shine because ultimately, the transparency is our strength. It is – is it what protects us. It is what separates our system from others – not that we're imperfect, and we are flawed, but this is what sets us apart. And as we've seen over the last years with global conventions about anti-corruption, whether that's the OECD, whether like-minded countries are doing this, we have to elevate the playing field, not degenerate the playing field to oligarchs and others that this is their form of governance. This is a form of authoritarian leaders that use state-owned assets and their buddies and the oligarchs to create a form of governance that is an anathema to democracy. So I can't begin to tell you – and I'm sure, yes, there would be some losses potentially of U.S. sales, but those sales that were corrupted, potentially, through bribes, they are discovered. It brings down governments. It's the ultimate protection, and it places us very differently.

When the – the other powerful mechanism that I wanted to mention that you – that you didn't discuss is sanctions. And this, again – and we have to be careful; this is a powerful tool, but I think some of the most meaningful sanctions, particularly in the Russia context, are access to the U.S. financial system for long-term financing. If our system is to be used, the highest standards have to be achieved to have the privilege of using that system. Again, it's holding others to a high standard; we have to hold ourselves to that. That's another very important I think discerning opportunity. We don't want to use it very often – it's very, very powerful – but

when we need to, we should.

I am sorry, I'm not knowledgeable about Frank-Dodd. But when the U.S. starts setting regulatory transparent standards because of our global dominance in the financial sector, other countries have to respond and respect that. And that's a very powerful tool, as long as we use it very carefully.

MOORE: Well, I would commend a good read of it before it gets repealed. Actually, Section 1504 addresses the extractive industries in oil and gas, and 1502 is the – relates to the extractive industries with regard to minerals and so forth – resource curse sort of minerals. And to try to – you know, and American companies have found that this is very helpful to them that there is a transparent supply chain, making sure that there is no corruption in the supply chain. And actually, you know, I know you deal with OSCE countries, but there is a lot of pushback in some African countries because people want the – they want an opaque environment so that they can continue to have these nefarious transactions. And so I would commend that to you for a good read.

Mr. Chairman, is my time expired?

WICKER: No. It would be the –

MOORE: Should I yield time for you, sir?

WICKER: It would be the height of offense for me to call time after Mr. Whitehouse and me. So you can –

MOORE: Well, you are the Chairman. This is the way this works. (Laughter.)

WICKER: If you'd like, you can ask another –

MOORE: But you – but your time had expired and you – I will yield my time to you, sir.

WICKER: Well, OK, in that case we'll take another round.

But we'll recognize Mr. Aderholt, and then, if there are other questions, we'll take those also. Mr. Aderholt.

ADERHOLT: Thank you, Mr. Chairman.

Thank you all for being here. I was just actually in Romania two weeks ago and had a chance to visit there with the prime minister and see some of the improvements been made. But certainly, we know that all of us, every country, we can always make improvements.

But I want to go – Senator Wicker mentioned the fact that – or he asked the question, what can OSCE do to try to call attention to the anti-corruption and try to deal with some of these issues? Let me go one step further: What can Congress do in that regard? And also, what

can we do to try to reach out to the NGOs? And I'd be interested to know – you know, I'll just open it up for any comments for me by any on the panel, your thoughts on that.

GITENSTEIN: Want me to respond?

ADERHOLT: Yes, please, Ambassador.

GITENSTEIN: First of all, I think reaching out to NGOs is a very good idea. There are a couple – I can give you the names of some really good NGOs that I worked with as ambassador who were very knowledgeable about the legal system. The best of the lot was the Expert Forum, which has tremendous expertise in the anti-corruption area – and, by the way, has – I've talked to them extensively about many of the issues that were discussed today, including Mr. Clark's report, and they have opinions on that. I think it's worth you spending some time with them.

And so what can Congress do? I tell you, my concern as Ambassador, just going back to the congresswoman's point about the FCPA – the FCPA empowers a U.S. ambassador to become more active on these issues because every day as a U.S. ambassador, you have some company coming in and saying – U.S. company – I'm subject to the FCPA, but this German or Italian company is not, and I'm being disadvantaged in Romania. And I agree with them. And I go to the prime minister, and I say, you have got to do something and create a level-playing field for my companies. You want more American investment, that's what has to happen. So that's a good thing.

What Congress could do is spend a little time and get the State Department a little more focused – I think even Heather would agree with this – in developing deeper expertise in this – in the local missions and the U.S. missions in this area. I mean, I was a lawyer, and I had a fool for a client as ambassador, and so I had to reach – I didn't have a lot of depth on my staff in this area – you know, experts on Romanian criminal code, experts on Romanian forfeiture laws – so that I can understand how we could strengthen that process. So this I think is an area where would be great to have you weigh in with State on these issues. I think that would be a good thing.

MOORE: I think this is – this is very – oh. Mr. Aderholt –

WICKER: Feel free.

ADERHOLT: I'll yield. (Laughter.)

MOORE: I know if I were with Jeb, boy, I'd be gaveled right now. (Laughter.)

ADERHOLT: I yield.

MOORE: So I have to remember. (Laughter.)

I was the original – an original co-sponsor of some anti-money laundering legislation in the Financial Services Committee. This is very, very much – and so I appreciate – we may even

try to get you to come and testify before our committee about the importance of this with regard to providing that leadership on a global basis. And so thank you so much.

And I yield.

WICKER: You might also testify on whether imposing Dodd-Frank on small-town and medium-sized banks has any effect at all on this. (Laughter.) But, Ms. Conley, I –

GITENSTEIN: I have absolutely no expertise in that. (Laughter.)

WICKER: But yes, I think we're going to go down the line and let Ms. Conley and Mr. Clark and Mr. Stephenson answer Mr. Aderholt's question.

CONLEY: Well, thank you. What you're doing today, you're drawing a light. You are focusing Congress' interest in this subject. Exactly as Ambassador Gitenstein said, you need to hold the administration to prioritize this in their conversations. And as I said, it's a – in full disclosure, we too often go immediately to the security requirements – what we need Romania to do for us, what that – and I don't mean to underestimate – that's clearly important – but the health of our democracies is equally important. And we have to make sure the administration focuses on this and understands and has the leverage that they need.

In my testimony, I went into greater detail; we don't have necessarily the means to engage fully. What our ambassadors do is amazing, and the U.S. ambassador in Bucharest is a huge contributor in the diplomatic community to pushing a government to do what it does not wish to do necessarily and holding that candle. But they need resources to do – to do that. We need to have seed money to fund NGOs and civil society who are working hard and doing the right things. We walked away from that because we said, you're done, you're in the European Union, you're in NATO, no further work required on our part. That was absolutely the wrong instinct. And I say one thing on my soapbox today, it's that we got that so terribly wrong. We have to recommit ourselves to this effort. I have a – working on European issues, transatlantic issues, I have a clear family first policy approach: We have to care about the family first. That is our allies. That is NATO. And when they struggle, we struggle. Because of the Article 5 commitments under NATO, we have to be very, very vigilant on this.

And then one final word on Mark's question about expertise: We have greatly diminished our European expertise and knowledge over the last decade. It just went elsewhere. We have to grow that back. And as I've told the Senate Armed Services Committee, in the U.S. embassy, the legal attaché may have more of a national security role to play than the defense attaché in our embassies. And that's a completely different way of looking at the world than we have.

WICKER: Ms. Conley, is Romania or has ever been a Millennium Challenge country?

CONLEY: I do not believe Romania is MCC. Moldova is. I do not believe Romania is.

GITENSTEIN: I don't think an EU country can get Millennium –

WICKER: They're assumed to be better than that.

GITENSTEIN: The assumption – we all make the assumption that once a country gets into the EU, it turns into Switzerland. (Laughter.) Well, I hate to break it to you, it doesn't happen that way.

CONLEY: Work in progress.

WICKER: Mr. Clark and then Mr. Stephenson.

CLARK: Yes. I made some suggestions about what I thought Congress could do at the end of my opening statement tonight. I expand on those a little bit in my memorandum.

I think if I was to highlight one, I would say really ask some difficult questions of the State Department. Look at some of the things – look at some of the abuses that are detailed in my memo, and ask the State Department whether they're aware of these and why they're not reflected in their human rights reporting.

For example, when you've got a situation where the superior counsel of magistracy is taken over by a prosecutor and some of the judges – some of the magistrates on that organization object and try and organize against it, and the response of the DNA is to open investigations against two of the judges who are leading that campaign, that's a cause of serious concern. That's reflected in I think it was either Freedom House or Human Rights Watch that drew attention to this. Their reporting reflects some of these concerns.

Why is the State Department's reporting not reflecting some of these concerns? When you've got a situation where a sitting prime minister can call a newspaper owner who has been critical of him corrupt and then say that shortly, the prosecutors would be – would be looking into this, and two weeks later that newspaper owner is arrested, you have to worry whether the politicians are pulling the strings of that prosecution. It seems pretty plain to me that it is. The same prime minister, Victor Ponta, did exactly the same thing against another newspaper owner.

These are serious concerns, again, not reflected in State Department human rights reporting; not reflected either in the CVM reporting, which raises serious doubts about the integrity of that. When you've got a constitutional court judge who votes to strike down for the third time a surveillance bill that the SRI had campaigned for and the very next day is arrested by the DNA for corruption, you have to wonder whether the timing is just a coincidence or whether that's actually something that really needs to be looked at properly. Not reflected in CVM reporting; not reflected in State Department reporting.

So ask some tough questions of your diplomats, and ask whether they are not engaged in exactly the same kind of wishful thinking for other reasons that the EU is currently engaged in with respect to Romania.

STEPHENSON: Congressman, I'll answer your question about how Congress might be



able to help. And I'll answer your question, Mr. Chairman, about the date of that resolution. House Resolution 949 was in July 2016. And while praising Romania, one of the things it said was that the ongoing cases against Rompetrol underscores Romania's lack of a truly independent, professional, and non-political –

WICKER: Was that '06?

STEPHENSON: 2006, yes, sir.

WICKER: Yes.

STEPHENSON: And so, 11 years ago, the House passed a resolution which highlighted this as a miscarriage of justice, so –

WICKER: Is your mic on?

STEPHENSON: (Comes on mic.) Thank you, sir.

If you'd like to do this again, I think that would get the –

ADERHOLT: That'd be a good timing.

STEPHENSON: That would – yes, sir. That would get the attention.

I would say secondly, I know you often meet with OSCE parliamentary groups a couple times a year, and if you would raise this with your counterparts, I think it would enlighten them.

And then third, I don't know if anyone is here from the Romanian embassy today, but their ambassador might want to hear about this from our legislators. And I would say those three things, sir, if it really were appropriate.

ADERHOLT: Thank you.

I yield back.

WICKER: Ms. Moore.

ADERHOLT: But I'll yield to Ms. Moore.

WICKER: Ms. Moore, you're recognized for another round.

MOORE: OK.

I just wanted some clarification from Mr. –

CLARK: Clark.

MOORE: – yeah – about our State Department weighing in about the corruption. Just clarify for me. You said that our State Department did not raise eyebrows, as it were, with the arrest of journalists and so on. Can you – is there – is there a clear responsibility within our State Department protocol where we – where we missed doing that?

CLARK: Well, the State Department produces an annual Human Rights Report –

MOORE: Right, the Human Rights Report.

CLARK: – which reaches conclusions about the level of respect that different countries give to fundamental rights. And it's worth looking at those, more for the omissions than for what's included. Read them side by side with some of the reporting from Freedom House and Human Rights Watch. For me, even the reporting of Freedom House and Human Rights Watch doesn't often pick up on many of the cases that I've described, but it picked up on some of them. And State Department and European Union, the CVM reporting, seem to completely ignore them. It's a serious omission.

MOORE: OK.

CONLEY: If I may – and perhaps, Mark, you'd like to jump in as well – I'm sure our embassy are focusing, tracking this and speaking privately. The question is sometimes we don't have the visibility in seeing that publicly. And what happens if the – if the private messages are not being addressed or we see backsliding, then that's when the public messages have to start ringing clear. That's when there have to be some impact for – and consequences for a real change to a country's posture.

I will agree with Mr. Clark we have all been too distracted, both the European Union and the United States, in understanding how backsliding of NATO and EU members weakens all of our collective memberships. And we need to do this. It's not easy. It's very difficult to criticize another ally when we depend upon that ally at the same time. But we have to find a way to do that. And the transparency and public discussion of this is absolutely vital.

And Mark, you might want – from your own experience.

GITENSTEIN: Well, the incidents we're talking about occurred when I was not ambassador, so – but I am very – I talk often to the current – my successor, and I have every confidence that if he saw a serious civil liberties violation or whatever, he would raise that with the appropriate authorities. He might not do it publicly. He might do it privately.

I know he and I both have an attitude – and I think – I would guess Heather agrees with me – that ultimately, we have to build institutions in these countries that can do it themselves. We can't have the country run by the U.S. ambassador. It's the Romania court system that has to – has to check a DNA or an SRI that's out of control.

That's beginning to happen in Romania because of the CVM, because of our – by the

way, the other ambassador who was extremely helpful on this was the U.K. ambassador. And you know why? Because U.K. has the U.K. bribery statute. He has the same problem that I did. The U.K. companies have an unlevel playing field, just like the American companies. So he wants a strong anti-corruption regime, just like we do. And I'm sure our ambassador is doing that.

But there's no harm in your – it's a good idea. By the way, it's no wrong – no harm in – I agree with Mr. Clark; there is no reason why this couldn't be a factor in the – in the mission looking at this through the Human Rights Report. And as I said, you should go to the CVM folks and have them look at it as well.

MOORE: Well, there is a meeting in Minsk that we're all going to, right, and so – of the OSCE Parliamentary – so I don't know, Mr. Chairman, what your sense is. But I guess I would love to see H.R. 949 be entered into the record of this meeting so that we could – without objection.

WICKER: If it has not already been, it will be – it will be entered at this point.

Is there a problem – and we're almost finished – Mr. Stephenson mentioned, after the offer was rejected, the press reports began. How do people in Romania get their information? Does the state own all the TV? Do they own the papers? And how much of a problem is that?

GITENSTEIN: My personal opinion is that the oligarchs in Romania have no trouble getting their message out. Now, that doesn't mean that Phil Stephenson can get his message out and can have an objective review of his proposal. He's not a Romanian oligarch. But I think the problem with Romanian media right now is I think three-quarters of it seems to be supported by those who have commercial interests – which, by the way, we have – we have that problem in our country as well. But the state-owned media changes from administration –

WICKER: Well, I tell you what: I turn on TV in the morning, and I sure hear a bunch of different views, moving from "Morning Joe" to "Fox and Friends" and everything in between.

GITENSTEIN: You get different views in Romania too. But all I'm saying is in terms of commercial concerns, they do a very good job of getting their message out in Romania.

CONLEY: And Senator, I would just also say, region-wise there is a real dominance of media ownership of two larger companies and very small media markets that amplifies that. We have a great diversity, as you mentioned, but in a small market, you know, a voice is going to prevail.

The other thing that we all did not mention, but you raised a very important issue, what we're seeing is really the diminishment of investigative journalism. That is, again, a front-line institution. And we have got – that is part and parcel of the anti-corruption fight. So it's not only investigative journalism and transparency there, that you have independent media that can – that can relate that information. And then you have institutions, prosecutors, judicial system that can then effectively prosecute. It's the whole shebang. It's what makes our democracies work.

And any part of that starts to collapse and not work, then the democracy is under great challenge.

GITENSTEIN: By the way, that's – in response to Congresswoman Moore – that's another place you could be influential is to get State and the NGOs and the foundations to become more active in supporting investigative journalism. It's a big problem in Romania.

MOORE: Just one other question Mr. Chairman.

Oh, I'm sorry.

CLARK: Can I – can I just very briefly come back on that point? Yes, the media environment in Romania is very complex, and it's, you know, enthralled all kinds of different interests. And therefore, it does a very poor job of serving of the public interest at times.

I will make one particular comment about the media environment. And that is one of the most pernicious examples of how the prosecutors try to skew the judicial system is the habitual practice of leaking information to the media pretrial, particularly telephone transcripts that have been obtained by the SRI and that can only have gotten to the media via the SRI or the DNA. That is such a routine practice in Romania that it barely passes – it passes barely with comment most of the time. But if it was to happen in the U.K. or any other, you know, established judicial system, a court, a judge would throw out the case because it would be impossible to have a fair trial in the context in which all of the media had been selectively – all of the evidence had been selectively leaked to the – to the national media.

The second thing is I would draw your attention to the comments that were made in Romania a couple days ago before a parliamentary inquiry by the Romanian ambassador here to Washington, who was also former head of the SRI, Ambassador Maior, in which he – in which he admitted that the SRI run penetration agents in the Romanian media. His excuse for this, quite – you know, without any sense of shame, was that this was necessary in a globalized era. Of course, we know that this has got nothing to do with globalization. This is a hangover from Soviet-era practice of the Securitate. The SRI run penetration agents in all levels of Romanian society, including the media, by the admission of a former head of the SRI and the ambassador to this country. Take a look at what he said. It's really quite extraordinary, I think, for any country, member of the European Union, one that considers itself to be a fully developed democracy, for that kind of statement to be made. But it's on the record.

WICKER: Mr. Clark, when half a million people took to the streets, how did they get their information? Was it social media?

GITENSTEIN: Mainly social media.

CLARK: Yes, social media. That's not –

GITENSTEIN: Mainly social media. Facebook, yeah.

WICKER: And what did the two major news organizations have to say about that?

CLARK: Well, it was fully reported in all media, yeah.

GITENSTEIN: It was fully – it was fully reported, yeah. But they didn't play a role in getting the people into the streets. I think it was social media that did.

I wanted to respond to this – to David's point about leaks. And by the way, I find the leaks generally not a good thing across the board, especially in prosecutorial cases. We're talking a lot about that in this country right now. But one reason there are a lot of leaks in Romania is Romania has a very unusual system of legislative immunity, very different than ours. And by the way, it's not unique to Romania; apparently, many European countries have this. Before a member of parliament – and remember, this is a parliamentary government, so if you're a minister, you're likely to be a member of parliament – can be prosecuted – and if you're a former member, you have to – you have to go through this process – the parliament has to vote – by the way, via secret ballot – as to whether to allow the prosecutor to proceed with the prosecution.

We have a different system, a much better system, in this country. Fortunately, members of Congress don't have to vote on whether or not a – first of all, it politicizes the process. More importantly, every member of parliament gets a dossier from the DNA laying out the allegations. So where do you think the information comes from? It may not come from the prosecutor. It may come from parliament. This is not – this is a system that ought to be focused on in Romania. I've spoken out on it a number of times. We have a much better system for dealing with immunity.

By the way, there ought to be a check on prosecutors who are being political. But to do it this way via secret ballot and having these dossiers floating around the parliament is not a good way to do it.

CLARK: I take Ambassador Gitenstein's point. I would just add that this practice happens even in cases where parliamentary immunity –

GITENSTEIN: I agree it does. I'm not denying it. I'm just saying one big cause of it is that.

WICKER: Ms. Moore, let's see if we can wrap this up. Do you have a final question?

MOORE: All right. I just have one burning question, Ms. Conley. You mentioned that money – that we're talking about the American foreign aid that we were lacking and that somehow, that this was – that we had sort of stepped away from being able to deal with the situation in Romania because we withdrew resources. I didn't – could you – could you just sort of –

CONLEY: Yeah, that's it, absolutely right. When Romania gained its independence, we had a surge of U.S. assistance to help that country transform itself. We continued after Romania entered NATO. And then, more significantly, after it entered the European Union, we withdrew

those funds.

MOORE: We, the United States, or –

CONLEY: The United States diminished those funds greatly. And in my written testimony, I really put out how quickly those numbers dropped.

And the thing is not that we, the U.S. government, has to sustain Romania; what we need to do is have select funding to help civil society and institutions to help further their work. It strengthens the work of the U.S. embassy as they're trying to meet this. It gives support to civil society when they may feel that they have no support.

And again, we think of these funds as – well, this is in the good – the nice-to-do category, and we don't really need to do that now. It's not the nice-to-do category. It's to strengthen an ally against a real challenge to its democratic institutions. And it also promotes U.S. values, our system, our preferences. And when we use those funds very selectively and very targeted in a very powerful way, we can really have some impact on the ground. And I think we need to revisit that.

MOORE: Thank you.

WICKER: Let's see if witnesses want to take 60 seconds each and say something that needs to be said or wrap this up or summarize.

Mr. Ambassador.

GITENSTEIN: First of all, I thought this was a very good discussion. I agree with much of what was said by all of the witnesses here. I do believe that fairness in the judicial and prosecutorial system is an important issue, and I think it ought to be focused on. But on the whole, the strategic goal here is to build a system that is aggressive and tough but fair in Romania. And I think that's beginning to happen.

WICKER: Ms. Conley.

CONLEY: Let me just thank you. Thank you, the Helsinki Commission, for focusing not only on Romania but the issue of corruption. I like to say this is the new battlefield where our institutions and public opinion is where the challenge is. And we have to prioritize it, so we want to support your work in any way we can. But thank you for having this hearing.

WICKER: Mr. Clark.

CLARK: Yeah, I would just like to say – agree with the other panelists that the fight against corruption is extremely important. It is the new front line in the fight for democratic values and democratic outcomes. But the anti-corruption fight cannot succeed unless it is also free of corruption. So there needs to be extra scrutiny of anti-corruption work to make sure that it's free of influences and considerations which are not based on the desire to stamp out

corruption but are based on other things. But thank you very much for the opportunity to speak to you today.

WICKER: And, Mr. Stephenson, you have the last word.

STEPHENSON: Well, thank you again. I want to emphasize that I don't think my problem is with Romania or Romanians or even the Romanian judiciary in general. I think my problem is with a few unidentified intelligence officers and a couple of prosecutors in DIICOT, not the DNA anti-corruption people. That being said, I lived in Romania. I respected the Romanians. I find many young, find Romanians fighting the good fight, including against corruption. And so I wish them well.

WICKER: And thank you very much.

MOORE: Thank you, Mr. Chairman.

WICKER: The hearing is now closed. We appreciate the witnesses. (Sounds gavel.)

[Whereupon, at 11:03 a.m., the hearing ended.]